



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,350	04/13/2001	George Adaniya	61650- 011 (ALPL-110)	2426

7590

12/04/2003

Mark G. Lappin, Esq, P.C.  
McDERMOTT WILL & EMERY  
28 State Street  
Boston, MA 02109-1775

EXAMINER
----------

THANH, LOAN H

ART UNIT	PAPER NUMBER
----------	--------------

3763

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/834,350

Applicant(s)

ADANIYA ET AL.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10, 14-19, 21, 22 and 26-38 is/are pending in the application.
- 4a) Of the above claim(s) 33-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 14-19, 21, 22 and 26-30 is/are rejected.
- 7) ☒ Claim(s) 4-5, 8, 10, 31-32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

Art Unit: 3763

## DETAILED ACTION

### *Response to Amendment*

The drawing and specification objection has been withdrawn in view of applicant's response filed 09/08/03.

The allowable subject matter has been withdrawn in view of the new found art.

Claims 31-38 have been withdrawn in view of the restriction/ election in paper number 7 and the response to the non-elected figures as communicated by applicant in paper no. 8.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1-3,6-7,15-19,21-22,27-30** are rejected under 35 U.S.C. 102(b) as being anticipated by Villani (U.S. Patent No. 5,848,949).

Villani discloses an implantable access device having a plate(s), at least two walls in the broadest interpretation. See figs. 1-9. The walls being any of the 4 walls (on either side of 37 are at least 2 walls depending on the interpretation). The valve assembly is considered to be the septum which is capable of performing the function as claimed. It is normally closed until it has been pierced by a filament. The shape of the plate and the distance between the walls are decreasing monotonically.

FIG. 1

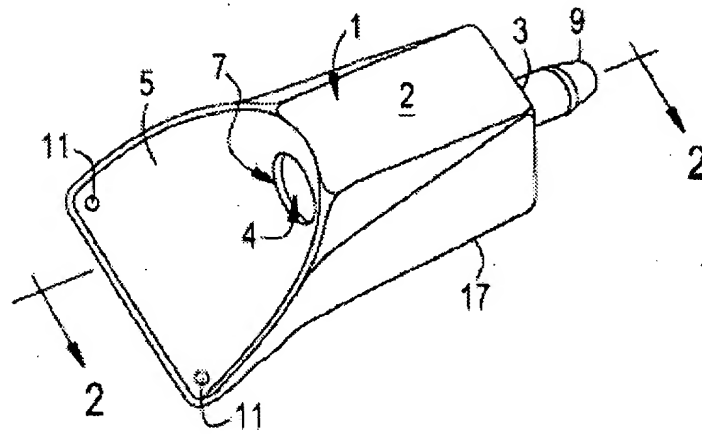


FIG. 4

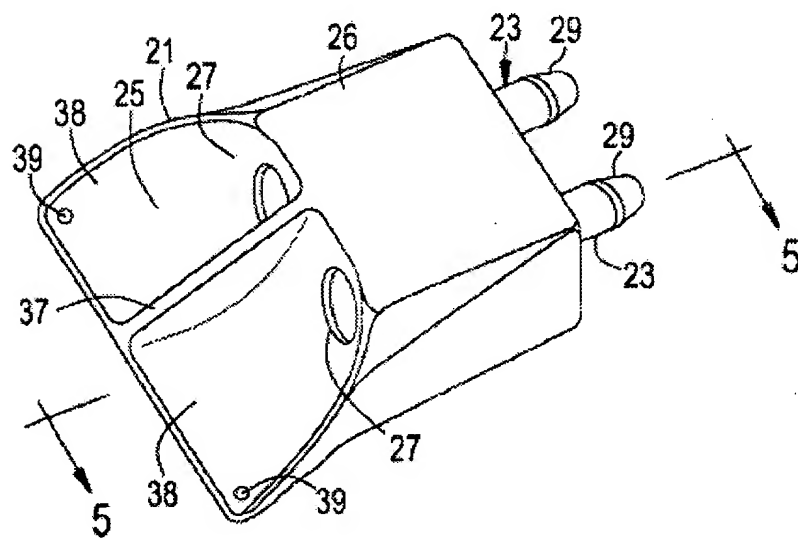
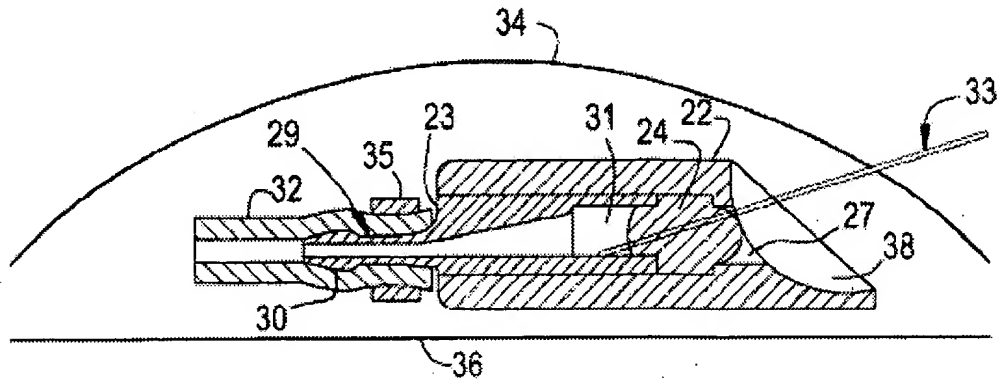


FIG. 6



### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14,26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Villani (U.S. Patent No. 5,848,989) in view of Fenton, Jr. (U.S. Patent No. 5,178,612).

Villani discloses the invention as substantially claimed. Villani teaches holes 39 for securing by suturing. However, Villani does not teach at least one wing extending outward from the port adapted to receive a fastener. Fenton, Jr. discloses a

Art Unit: 3763

wing with suture holes (40) in the analogous art of implantable ports. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the extended area beyond the port walls with suture holes as taught by Fenton, Jr. in order to provide securement of the implantable port to a desired surface.

### ***Response to Arguments***

Applicant's arguments with respect to claims 17-19,21-22,26-30 have been considered but are moot in view of the new ground(s) of rejection.

### ***Allowable Subject Matter***

Claims 4-5,8,10,31-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (703) 305-0038. The examiner can normally be reached on Monday to alternating Fridays (7:00 am-4:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone numbers

Art Unit: 3763

for the organization where this application or proceeding is assigned are (703) 872-9302  
for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or  
proceeding should be directed to the receptionist whose telephone number is  
(703) 308-0858.



LoAn H. Thanh  
Examiner  
Art Unit 3763

LT  
December 1, 2003